

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 07-N-10364-RAH
MICHAEL EDWIN MANNING,)	DECISION INCLUDING DISBARMENT
Member No. 149757,)	RECOMMENDATION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT

I. INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar) alleging that respondent Michael Edwin Manning failed to comply with rule 955 of the California Rules of Court¹ as ordered by the Supreme Court. The State Bar was represented by Gordon L. Grenier. Respondent did not participate either in person or by counsel.

For the reasons stated below, it is recommended that respondent be disbarred.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed and properly served on respondent on March 8, 2007, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar (official address). (Bus. & Prof. Code §6002.1, subd. (c)²; Rules Proc. of State Bar, rules 60(b) and 583.) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The return receipt executed by “Michael E. Manning” was returned to the State Bar on March 10, 2007.

On March 20, 2007, the State Bar Court properly served respondent by first-class mail,

¹Future references to rule are to this source. Rule 955 was renumbered as rule 9.20 effective January 1, 2007.

²All references to section are to this source.

postage prepaid at his official address with a notice scheduling a status conference on April 12, 2007. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (h) which indicate that this correspondence was not returned as undeliverable.

Respondent did not appear at the status conference. The court tried to reach him at his official membership records telephone number but reached a voice-mail message indicating it as respondent's voicemail. The court's clerk left a message for respondent regarding the status conference. On April 13, 2007, an order memorializing the status conference was properly served on him at his official address.

Respondent did not file a response to the NDC. On April 12, 2007, the State Bar filed and properly served on respondent a motion for entry of default by certified mail, return receipt requested, at his official address. (Rules Proc. of State Bar, rule 200(a), (b).) The motion advised respondent that the State Bar would seek minimum discipline of disbarment if he was found culpable. (Rules Proc. of State Bar, rule 200(a)(3).)

Respondent did not respond to the default motion. Orders entering respondent's default and involuntarily enrolling him inactive were filed and properly served on him on May 4, 2007, by certified mail, return receipt requested at his official address. This document advised respondent, among other things, that he was enrolled inactive pursuant to section 6007, subdivision (e) effective three days after service of the order.

The State Bar's efforts to contact respondent by mail, email and telephone were fruitless. The case was submitted for decision on May 8, 2007.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (Section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).) The findings are also based upon matters admitted into evidence or judicially noticed.

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 4, 1990, and has been a member of the State Bar at all times since.

B. Facts

On September 26, 2006, the California Supreme Court filed an order, number S145365 (September 26 order), in State Bar Court case no. 05-O-03387 in which respondent was ordered, among other things, to be actually suspended for four months. If he was actually suspended for 90 days or more, he was also ordered to comply with rule 955(a) and (c) within 30 and 40 days, respectively, of the effective date of its order. The order was effective on October 26, 2006. (Rule 953(a).³) Accordingly, respondent was to comply with rule 955(c) no later than December 5, 2006.

The Supreme Court promptly sent respondent a copy of its order.⁴ A copy of it also was attached to the NDC in the instant proceeding.

As of March 8, 2007, respondent had not filed with the State Bar Court the affidavit required by rule 955(c). He still has not done so.⁵ He has offered no explanation for his noncompliance with rule 955(c).

C. Legal Conclusions

There is clear and convincing evidence that respondent wilfully violated the September 26, order directing his compliance with rule 955.⁶ This constitutes a violation of rule 955(d),

³This rule was renumbered as rule 9.18 effective January 1, 2007.

⁴Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court (formerly numbered as rule 29.4(a)) requires the Clerk to promptly transmit a copy of all opinions and orders to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his duty and transmitted a copy of the Supreme Court's order to respondent promptly after its filing.

⁵Pursuant to Evidence Code section 452, subdivision (d), the court judicially notices that its records still do not contain a rule 955(c) affidavit from respondent.

⁶Wilfulness in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred an attorney whose failure to keep his official address current prevented him from learning that he had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

which makes the wilful noncompliance with the provisions of rule 955 a cause for disbarment, suspension or revocation of probation, in relevant part.

IV. FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁷, std. 1.2(b).)

Respondent's prior discipline record is an aggravating circumstance. (Std. 1.2(b)(i).) As previously discussed, in S145365, the Supreme Court imposed discipline consisting of stayed suspension for two years and until respondent complied with standard 1.4(c)(ii) and three years' probation on conditions including four months' actual suspension, among other things. In that matter, respondent and the State Bar stipulated that he was culpable, in one client matter, of violating sections 6068, subdivision (a)/6125 and 6126 and section 6068, subdivision (m). His prior disciplinary record was considered in aggravation. In mitigation, it was noted that the misconduct herein occurred concurrently with that in S116448 (State Bar Court case no. 05-PM-00949).

In S136102 (State Bar Court case no. 04-O-12616), filed October 18, 2005, the Supreme Court imposed discipline consisting of one year of stayed suspension and two years' probation on conditions including 45 days' actual suspension, among other things. In that matter, respondent and the State Bar stipulated that he was culpable, in one client matter, of violating rule 3-100(A) of the Rules of Professional Conduct and section 6068, subdivisions (i) and (m). There were no mitigating circumstances and his prior disciplinary record was considered in aggravation.

In S116448 (State Bar Court case no. 05-PM-00949), filed October 18, 2005, the Supreme Court imposed discipline consisting of 90 days' actual suspension for not complying with probation conditions, namely not timely filing five quarterly reports. The parties stipulated to remorse as a mitigating factor and to multiple acts of misconduct and a prior record of discipline as aggravating factors.

⁷Future references to standard or std. are to this source.

In S116448 (State Bar Court case no. 97-O-18651), the Supreme Court imposed discipline consisting of one years' stayed suspension and two years' probation with conditions, among other things. In that matter, respondent and the State Bar stipulated that he was culpable, in one client matter, of violating rules 3-110(A) and 4-100(B)(3) of the Rules of Professional Conduct and section 6068, subdivision (m). No prior record of discipline was the sole mitigating factor. Inability or unwillingness to account for improper conduct toward trust funds or property was the only aggravating factor.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying with rule 955(c) even after the NDC in the instant proceeding was filed. (Std.1.2(b)(v).)

Respondent's failure to participate in proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109-110.)

V. FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES

Respondent did not participate in these proceedings or present any mitigating circumstances pursuant to standard 1.2(e). Since respondent bears the burden of establishing mitigation by clear and convincing evidence, the court has no basis for finding mitigating factors.

VI. LEVEL OF DISCIPLINE

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's wilful failure to comply with rule 955(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116,131; rule 9.20(d) (formerly rule 955(d).) Disbarment has been consistently imposed by the Supreme Court as the sanction for noncompliance with rule 955. (*Bercovich v.*

State Bar, supra, 50 Cal.3d at p. 131; *Lydon v. State Bar, supra*, 45 Cal.3d at p. 1188; *Powers v. State Bar, supra*, 44 Cal.3d at p. 342.)

Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given the opportunity to do so. He did not participate in this proceeding and did not comply with rule 955(c). More importantly, respondent's noncompliance with rule 955 undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar, supra*, 45 Cal.3d at p. 1187.)

Respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his unexplained wilful disobedience of the Supreme Court 's order.

VII. DISCIPLINE RECOMMENDATION

It is hereby recommended that respondent Michael Edwin Manning be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in rule 9.20(c) within 40 days of the effective date of the order showing his compliance with said order.

VIII. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

IX. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective

three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: July ____, 2007

RICHARD A. HONN
Judge of the State Bar Court